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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NICOLE MCDONAGH, DAVID GRUCELLO,
on behalf of themselves, and all others similarly
situated,

Plaintiffs,

v.

HARRAH'S LAS VEGAS, INC., HARRAH'S
ENTERTAINMENT, LLC, and DOES 1 through
50, inclusive,

Defendants.

Case No. 13-cv-01744 RFB CWH

Hon. Richard F. Boulware

**PLAINTIFFS' *EX PARTE* APPLICATION
FOR LEAVE TO FILE UNDER SEAL
EXHIBIT 2 TO MENHENNET
DECLARATION IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

1 PLEASE TAKE NOTICE that Plaintiffs Nicole McDonagh and David Grucello hereby apply to
2 the Court *ex parte* for leave to allow Plaintiffs to file the following documents under seal, pursuant to
3 the Stipulated Protective Order filed on December 2, 2014 (Dkt. No. 57). Defendant has been notified
4 about the Plaintiffs' intention to file this application. These documents are being submitted as part of
5 the Declaration of Janine Menhennet in Support of Plaintiffs' Opposition to Defendant's Motion for
6 Summary Judgment, filed concurrently herewith. The documents requested to be filed under seal are as
7 follows:

- 8 • Menhennet Decl. Exhibit 2: Excerpts of the deposition transcript of William M. Kelly,
9 Defendant's 30(b)(6) witness.

10 Good cause exists to allow Plaintiffs to file this document under seal because (1) it is subject to
11 the parties' Stipulated Protective Order; (2) it could be considered a document containing trade secrets
12 or other non-public information of a proprietary, strategic, commercially valuable and/or competitively
13 sensitive nature of Defendant.

14 This Application is based upon this Notice, the attached Memorandum of Points and
15 Authorities, the attached Declaration of Janine R. Menhennet, and the pleadings, documents and
16 records on file in this action, and such further or additional evidence or argument as may be presented
17 before or at the time this application is taken under submission.
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19
20 Dated: December 3, 2014

THE MARKHAM LAW FIRM

21 By: /s/ Janine R. Menhennet
22 Janine R. Menhennet
23 jmenhennet@markham-law.com
24 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. GOOD CAUSE EXISTS TO SEAL EXHIBIT 2 TO MENHENNET DECLARATION

“[T]he Supreme Court recognize[s] a federal common law right to ‘inspect and copy public records and documents.’ This right extends to pretrial documents filed in civil cases...” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003) (quoting *Nixon v. Warner Commc’n*, 435 U.S. 589, 597 (1978)). As such, there is “a strong presumption in favor of access to court records,” *id.* at 1135 (citation omitted), unless the documents are “among those which have ‘traditionally been kept secret for important policy reasons,’” *id.* at 1134 (quoting *Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir. 1989)).

A party moving to seal a court document needs to overcome this presumption by meeting the compelling reasons standard. “That is, the party must articulate compelling reasons supported by specific factual findings,...that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process.” *Kamakana v. City & Cnty of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations and quotation marks omitted).

However, there is an exception to the presumption of access to court records for documents attached to a non-dispositive motion and filed under seal pursuant to a valid protective order. “[T]he presumption of access [is] rebutted because ‘when a court grants a protective order for information produced during discovery, it already has determined that “good cause” exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality,’” *Foltz*, 331 F.3d at 1135 (quoting *Phillips v. GMC*, 307 F.3d 1206, 1213 (9th Cir. 2002)). In that respect, courts routinely enter protective orders for personal, sensitive information. *See, e.g., In re Zyprexa Injunction*, 474 F.Supp.2d 385, 394 (E.D.N.Y. 2007).

Here, documents sought to be sealed are marked “Confidential,” pursuant to the Parties’ Protective Order.” The Stipulated Protective Order was filed by the Parties on December 2, 2014. *See* Dkt. No. 57. Thus, it has already been determined that good cause exists to seal those documents.

Further, Exhibit 2 to Menhennet Declaration, which is deposition testimony of Defendant's 30(b)(6) expert, qualifies as information containing trade secrets or other non-public information of a proprietary, strategic, commercially valuable and/or competitively sensitive nature of Defendant. *See Nutratech, Inc. v. Syntech Int'l, Inc.*, 242 F.R.D. 552, 554 n.4 (C.D. Cal. 2007) ("Fed. R. Civ. P. 26(c)(7) does not limit its reach to 'trade secrets,' but also allows for protection of 'confidential commercial information.'") Thus, good cause exists to seal this document.

II. CONCLUSION

For the reasons discussed above, the Court should grant Plaintiffs' *Ex Parte* Application to File Under Seal the unredacted version of Exhibits 2 to Menhennet Declaration. This document is subject to the Stipulated Protective Order. Additionally, independent reasons, such protection of financial and commercial information, and trade secrets, warrant sealing this documents.

Dated: December 3, 2014

THE MARKHAM LAW FIRM

By: /s/ Janine R. Menhennet
 Janine R. Menhennet
 jmenhennet@markham-law.com
 Attorneys for Plaintiffs

IT IS SO ORDERED.

Dated: December 10, 2014.



HON. RICHARD F. BOULWARE
 UNITED STATES DISTRICT JUDGE

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**DECLARATION OF JANINE R.
MENHENNET IN SUPPORT OF
PLAINTIFFS' *EX PARTE* APPLICATION
FOR LEAVE TO FILE UNDER SEAL
EXHIBIT 2 FILED IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

1 I, Janine R. Menhennet, declare:

2 1. I am an attorney at law admitted *pro hac vice* to practice before this Court. I am an associate at
3 the Markham Law Firm, counsel of record for Plaintiffs Nicole McDonagh and David Grucello in this
4 action.

5 2. I submit this Declaration in support of Plaintiff's *Ex Parte* Application for Leave to File under
6 Seal the Unredacted Exhibit 2 to Menhennet Declaration in Support of Plaintiffs' Opposition to
7 Defendant's Motion for Summary Judgment. I have personal knowledge of the facts contained in this
8 declaration, and if called as a witness, I would and could competently testify to those facts.

9 3. In compliance with the Parties' Stipulated Protective Order, filed on December 2, 2014, this
10 application will be served on the opposing counsel. On December 3, 2014, I have informed Defendant's
11 counsel of Plaintiffs' intention to file this application.

12 I declare under penalty of perjury under the laws of the State of Nevada and of the United States of
13 America that the foregoing is true and correct.
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16
17 Dated: December 3, 2014

THE MARKHAM LAW FIRM

18 By: /s/ Janine R. Menhennet
19 Janine R. Menhennet
20 jmenhennet@markham-law.com
21 Attorneys for Plaintiffs
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